

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
*See* Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

SEP 16 2010

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

JOEL M. COOPER,	)	2 CA-HC 2010-0001
	)	DEPARTMENT B
Petitioner/Appellant,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 28, Rules of Civil
CARSON McWILLIAMS, Warden,	)	Appellate Procedure
Arizona State Prison Complex–Florence,	)	
	)	
Respondent/Appellee.	)	
_____	)	

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. CR200901011

Honorable Bradley M. Soos, Judge Pro Tempore

AFFIRMED

Michael Villarreal

Florence  
Attorney for Petitioner/Appellant

K E L L Y, Judge.

¶1 Appellant Joel Cooper, an inmate in the custody of the Arizona Department of Corrections (ADOC), appeals from the trial court’s order of February 22, 2010, directing ADOC to release him to the temporary custody of Massachusetts authorities to face criminal charges pending against him there. Cooper contends the Massachusetts documents supporting the transfer request were legally insufficient because they were

merely certified, not authenticated as the Uniform Criminal Extradition Act (UCEA) requires. We affirm, notwithstanding the state's failure to file an answering brief. *See Braillard v. Maricopa County*, 224 Ariz. 481, n.12, 232 P.3d 1263, 1276 n.12 (App. 2010) (whether to treat failure to file answering brief as confession of error rests in court's discretion).

¶2           Apparently in June 2009, ADOC received from Massachusetts authorities a request for temporary custody of Cooper pursuant to article IV of the Interstate Agreement on Detainers (IAD), codified in Arizona at A.R.S. §§ 31-481 and 31-482. Cooper opposed the request and, in September 2009, filed a petition for writ of habeas corpus seeking to prevent his extradition on the dual grounds that “he is not the person wanted in the Commonwealth of Massachusetts and that the detainer[] papers are not in proper order.” The trial court denied Cooper's petition at a hearing on December 11, 2009.

¶3           In the February 2010 ruling from which Cooper appeals, the trial court ordered his temporary release to Massachusetts authorities not pursuant to the UCEA, A.R.S. §§ 13-3841 through 13-3870.02, but expressly pursuant to the IAD.<sup>1</sup> The court

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<sup>1</sup>The court's minute entry states in pertinent part:

6. Pursuant to A.R.S. § 31-481, and Article IV, Interstate Agreement on Detainers, the Worcester County (Massachusetts) District Attorney's Office made a proper request for temporary custody; provided certified and authenticated copies of the charging documents, arrest warrants, and identification documents; that the temporary request was argued by the prosecutor and certified by the requesting jurisdiction[']s Presiding Judge.

entered its order following a series of hearings at which it confirmed Cooper's identity as the person sought for prosecution in Massachusetts and concluded the documentation supporting the request was legally sufficient.

¶4 Initially, the trial court appears to have believed Cooper's transfer was subject to the UCEA. Thus, the court stated at the hearing on December 11 that it found "the requirements of [§] 13-3845" were satisfied and that "[t]he statute requires a warrant of extradition issued by the governor of this state after proper demand from the governor of . . . Massachusetts." *See generally* §§ 13-3847, 13-3848. Cooper at that point was arguing that the IAD applied, that it required the Massachusetts complaints and warrants to be certified, and that the documents supporting the transfer request were not certified.

¶5 Subsequently, Cooper changed his argument to contend—without benefit of any supporting authority—that, because he objected to his transfer to Massachusetts under the IAD, the UCEA applied and, in effect, trumped the IAD and required the charging documents from Massachusetts be authenticated and not merely certified. At the trial court's direction, both parties filed legal memoranda on the issue in February 2010, after which the court issued its order directing ADOC to make Cooper temporarily available to Massachusetts authorities pursuant to the IAD.

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Therefore, IT IS ORDERED, the Department of Corrections shall make the defendant available for temporary release to the State of Massachusetts, and that upon disposition of the charges in Massachusetts, the defendant shall be timely returned to Arizona to continue serving his sentence.

¶6 Cooper continues to maintain on appeal, still without citation to authority, that he “is afforded all protections of the [UCEA] whenever he declines, as here, the transfer to another jurisdiction under the [IAD].” Quoting § 13-3843(B) of the UCEA, which he mistakenly but consistently cites as § 13-3841(B), Cooper contends that authenticated copies of the Massachusetts documents were required under the UCEA and that the certified copies provided in compliance with the IAD are insufficient to support his transfer to the custody of Massachusetts authorities.

¶7 The issue presented, whether the IAD or the UCEA applies to another state’s request to take temporary custody of an Arizona prisoner sought for prosecution in that other jurisdiction, is a question of law, which we review de novo. *See State v. Almy*, 216 Ariz. 41, ¶ 23, 162 P.3d 680, 683 (App. 2007); *State v. Galvez*, 214 Ariz. 154, ¶ 16, 150 P.3d 241, 244 (App. 2006). We conclude the trial court correctly applied the IAD in finding Massachusetts had “made a proper request for temporary custody” of Cooper and had presented sufficient supporting documentation in the form of “certified and authenticated copies of the charging documents, arrest warrants, and identification documents.”<sup>2</sup>

¶8 “A ‘detainer’ is ‘a request filed by a criminal justice agency with the institution in which a prisoner is incarcerated, asking that the prisoner be held for the agency, or that the agency be advised when the prisoner’s release is imminent.’” *State v.*

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<sup>2</sup>The certified copies of the Massachusetts documents arguably were also properly authenticated by a signed, sworn letter to the trial court dated August 21, 2009—effectively an affidavit—by Worcester County, Massachusetts, Assistant District Attorney Michael Salloum.

*Burkett*, 179 Ariz. 109, 111, 876 P.2d 1144, 1146 (App. 1993), quoting *Fex v. Michigan*, 507 U.S. 43, 44 (1993). Both by definition, therefore, and by its express statement of purpose, see § 31-481, art. I, the IAD applies to prisoners like Cooper—“persons already incarcerated”—in one state who have criminal charges pending against them in another jurisdiction.

¶9 In contrast to the IAD, the UCEA authorizes and facilitates the arrest within one state and the subsequent delivery to another state of a person “charged in th[e latter] state with treason, felony, or other crime, who has fled from justice and is found in this state.” A.R.S. § 13-3842. A person sought for extradition under the UCEA need not already be in custody, as amply illustrated by the numerous provisions of the Act that refer to the issuance and execution of an arrest warrant, see §§ 13-3847 through 13-3850, 13-3852 through 13-3854, 13-3857, and to the admission to bail of a person so arrested, see §§ 13-3855 through 13-3858. See also, e.g., *Golden v. Dupnik*, 151 Ariz. 227, 228-29, 726 P.2d 1096, 1097-98 (App. 1986) (Tennessee warrant for defendant’s arrest in Arizona led to issuance of Arizona governor’s warrant under UCEA; defendant arrested and jailed in Arizona pending extradition to Tennessee); *State ex rel. Babbitt v. Kinman*, 27 Ariz. App. 66, 67, 550 P.2d 1108, 1109 (1976) (extradition proceedings begun after fugitive arrested in Arizona on Oklahoma warrant refused to waive extradition).

¶10 The IAD plainly applies to the request by Massachusetts authorities in this case for temporary custody of Cooper. We reject Cooper’s bare, unsupported assertion that the provisions and protections of the UCEA apply to a prisoner who objects to his or her transfer to another jurisdiction pursuant to the IAD. The record supports the trial

court's order directing ADOC to make Cooper available for release to the temporary custody of Massachusetts authorities, and we affirm the order.

/s/ Virginia C. Kelly  
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez  
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Peter J. Eckerstrom  
PETER J. ECKERSTROM, Judge